

## Internal Revenue Service, Treasury

## § 1.860-5

860(e)(3). The determination is dated November 1, 1979, and increases X's real estate investment trust taxable income (computed without the dividends paid deduction) by \$20 to \$120. Thus, taking into account the \$100 of dividends paid in 1977, X has undistributed real estate investment trust taxable income of \$20 as a result of the determination. X pays a dividend of \$20 on November 10, 1979, files a claim for a deficiency dividend deduction of this \$20 pursuant to section 860(g) on November 15, 1979, and is allowed a deficiency dividend deduction of \$20 for 1977. After taking into account this deduction, X has no real estate investment trust taxable income and meets the distribution requirements of section 857(a)(1). However, for purposes of section 6601 (relating to interest on underpayment of tax), the tax imposed by chapter 1 of the Code on X for 1977 is deemed increased by this \$20, and the last date prescribed for payment of the tax is March 15, 1978 (the due date of the 1977 return determined without any extension of time). The tax of \$20 is deemed paid on November 15, 1979, the date the claim for the deficiency dividend deduction is filed. Thus, X is liable for interest on \$20, at the rate established under section 6621, for the period from March 15, 1978, to November 15, 1979. Also, for purposes of determining whether X is liable for any addition to tax or additional amount imposed by chapter 68 of the Code (including the penalty prescribed by section 6697), the amount of tax imposed on X by chapter 1 of the Code is deemed to be increased by \$20 (the amount of the deficiency dividend deduction allowed), the last date prescribed for payment of such tax is March 15, 1978, and the tax of \$20 is deemed to be paid on November 15, 1979. X, however, is not subject to interest and penalties for the amount of any tax for which it would have been liable under section 11(a), 56(a), 1201(a), or 857(b) had it not been allowed the \$20 deduction for deficiency dividends.

*Example 2.* Assume the facts are the same as in example (1) except that the district director, upon examining X's income tax return, asserts an income tax deficiency of \$4, based on an asserted increase of \$10 in real estate investment trust taxable income, and no agreement is entered into between the parties. X pays the \$4 on June 1, 1979, and files suit for refund in the United States District Court. The District Court, in a decision which becomes final on November 1, 1980, holds that X did fail to report \$10 of real estate investment trust taxable income and is not entitled to any refund. (No other item of income or deduction is in issue.) X pays a dividend of \$10 on November 10, 1980, files a claim for a deficiency dividend deduction of this \$10 on November 15, 1980, and is allowed a deficiency dividend deduction of \$10 for 1977. Assume further that \$4 is refunded to X on December 31, 1980, as the result of the \$10

deficiency dividend deduction being allowed. Also assume that any assessable penalties, additional amounts, and additions to tax (including the penalty imposed by section 6697) for which X is liable are paid within 10 days of notice and demand, so that no interest is imposed on such penalties, etc. X's liability for interest for the period March 15, 1978, to June 1, 1979, is determined with respect to \$10 (the amount of the deficiency dividend deduction allowed). X's liability for interest for the period June 1, 1979, to November 15, 1980, is determined with respect to \$6, *i.e.*, \$10 minus the \$4 payment. X is entitled to interest on the \$4 overpayment for the period described in section 6611(b)(2), beginning on November 15, 1980.

(Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; sec. 860(e) (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)))

[T.D. 7936, 49 FR 2108, Jan. 18, 1984]

### § 1.860-4 Claim for credit or refund.

If the allowance of a deduction for a deficiency dividend results in an overpayment of tax, the taxpayer, in order to secure credit or refund of the overpayment, must file a claim on Form 1120X in addition to the claim for the deficiency dividend deduction required under section 860(g). The credit or refund will be allowed as if on the date of the determination (as defined in section 860(e)) two years remained before the expiration of the period of limitations on the filing of claim for refund for the taxable year to which the overpayment relates.

(The reporting requirements of this section were approved by the Office of Management and Budget under control number 1545-0045)

(Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; sec. 860(e) (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)))

[T.D. 7936, 49 FR 2109, Jan. 18, 1984]

### § 1.860-5 Effective date.

(a) *In general.* Section 860 and §§ 1.860-1 through 1.860-4 apply with respect to determinations after November 6, 1978.

(b) *Prior determination of real estate investments trusts.* Section 859 (as in effect before the enactment of the Revenue Act of 1978) applies to determinations with respect to real estate investment trusts occurring after October 4, 1976, and before November 7, 1978. In the case of such a determination, the rules in §§ 1.860-1 through 1.860-4 apply, a reference in this chapter 1 to section 860

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(or to a particular provision of section 860) shall be considered to be a reference to section 859 (or to the corresponding substantive provision of section 859), as in effect before enactment of the Revenue Act of 1978, and “qualified investment entity” in §§ 1.381(c)25-1(a) and 1.860-1 through 1.860-3 means a real estate investment trust.

(Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; sec. 860(e) (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)))

[T.D. 7936, 49 FR 2109, Jan. 18, 1984]

### § 1.860A-0 Outline of REMIC provisions.

This section lists the paragraphs contained in §§ 1.860A-1 through 1.860G-3.

#### *Section 1.860A-1 Effective dates and transition rules.*

- (a) In general.
- (b) Exceptions.
- (1) Reporting regulations.
- (2) Tax avoidance rules.
- (i) Transfers of certain residual interests.
- (ii) Transfers to foreign holders.
- (iii) Residual interests that lack significant value.
- (3) Excise taxes.
- (4) Rate based on current interest rate.
- (i) In general.
- (ii) Rate based on index.
- (iii) Transition obligations.

#### *Section 1.860C-1 Taxation of holders of residual interests.*

- (a) Pass-thru of income or loss.
- (b) Adjustments to basis of residual interests.
- (1) Increase in basis.
- (2) Decrease in basis.
- (3) Adjustments made before disposition.
- (c) Counting conventions.

#### *Section 1.860C-2 Determination of REMIC taxable income or net loss.*

- (a) Treatment of gain or loss.
- (b) Deductions allowable to a REMIC.
- (1) In general.
- (2) Deduction allowable under section 163.
- (3) Deduction allowable under section 166.
- (4) Deduction allowable under section 212.
- (5) Expenses and interest relating to tax-exempt income.

#### *Section 1.860D-1 Definition of a REMIC.*

- (a) In general.
- (b) Specific requirements.
- (1) Interests in a REMIC.
- (i) In general.
- (ii) De minimis interests.

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- (2) Certain rights not treated as interests.
- (i) Payments for services.
- (ii) Stripped interests.
- (iii) Reimbursement rights under credit enhancement contracts.
- (iv) Rights to acquire mortgages.
- (3) Asset test.
- (i) In general.
- (ii) Safe harbor.
- (4) Arrangements test.
- (5) Reasonable arrangements.
- (i) Arrangements to prevent disqualified organizations from holding residual interests.
- (ii) Arrangements to ensure that information will be provided.
- (6) Calendar year requirement.
- (c) Segregated pool of assets.
- (1) Formation of REMIC.
- (2) Identification of assets.
- (3) Qualified entity defined.
- (d) Election to be treated as a real estate mortgage investment conduit.
- (1) In general.
- (2) Information required to be reported in the REMIC's first taxable year.
- (3) Requirement to keep sufficient records.

#### *Section 1.860E-1 Treatment of taxable income of a residual interest holder in excess of daily accruals.*

- (a) Excess inclusion cannot be offset by otherwise allowable deductions.
- (1) In general.
- (2) Affiliated groups.
- (3) Special rule for certain financial institutions.
- (i) In general.
- (ii) Ordering rule.
- (A) In general.
- (B) Example.
- (iii) Significant value.
- (iv) Determining anticipated weighted average life.
- (A) Anticipated weighted average life of the REMIC.
- (B) Regular interests that have a specified principal amount.
- (C) Regular interests that have no specified principal amount or that have only a nominal principal amount, and all residual interests.
- (D) Anticipated payments.
- (b) Treatment of a residual interest held by REITs, RICs, common trust funds, and subchapter T cooperatives. [Reserved]
- (c) Transfers of noneconomic residual interests.
- (1) In general.
- (2) Noneconomic residual interest.
- (3) Computations.
- (4) Safe harbor for establishing lack of improper knowledge.
- (5) Asset test.
- (6) Definitions for asset test.
- (7) Formula test.